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No. 93-1883

In the

Supreme Court of the United States

October Term, 1994

ELOISE ANDERSON, in her official capacity as Director of the California Department of Social Services, and RUSSELL GOULD, in his official capacity as Director of the California Department of Finance,
Petitioners,

v.

VERNA EDWARDS, Guardian ad Litem for Verna Edwards, et al.,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF AMICUS CURIAE OF PACIFIC LEGAL FOUNDATION IN SUPPORT OF PETITIONERS

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QUESTION PRESENTED FOR REVIEW

May a state, consistent with federal law under the Aid to Families with Dependent Children (AFDC) program, adopt a rule that requires the needy caretaker relative and all needy children, siblings and nonsiblings, when such persons live in the same household, to be included in the same AFDC assistance unit?

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INTEREST OF AMICUS CURIAE

Pacific Legal Foundation is a nonprofit tax-exempt corporation organized and existing under the laws of California for the purpose of engaging in litigation in matters affecting the public interest. Policy for Pacific Legal

Foundation is set by a Board of Trustees composed of concerned citizens. Approximately half of the 21-member board are attorneys. The Board evaluates the merits of any contemplated legal action and authorizes such legal action only where the Foundation's position has broad support within the general community.

Pacific Legal Foundation is gravely concerned by the action of the court below in invalidating a state welfare rule on the basis of a Ninth Circuit precedent which incorrectly interpreted federal welfare regulations and which failed to extend the proper deference to the responsible federal agency's interpretation of its regulations expressly allowing the state to promulgate and enforce its welfare rule. This Court has long recognized the latitude granted each state in dispensing its available welfare funds in *Dandridge v. Williams*, 397 U.S. 471 (1973); and *Jefferson v. Hackney*, 406 U.S. 535 (1972), among others. It recently reaffirmed the broad deference due a federal agency's interpretation of its regulations, especially in complex and highly technical regulatory programs in *Thomas Jefferson University v. Shalala*, 512 U.S. ____, 129 L. Ed. 2d 405 (1994).

Pacific Legal Foundation considers that this case is of special significance in that it raises fundamental questions concerning the tendency of some lower courts to intrude into the administration by state and federal welfare agencies of joint welfare programs governed by the Social Security Act and require that the determination of benefits be performed in a manner contrary to the Department of Health and Human Services' interpretation of the controlling federal regulations and contrary to the intent behind them. Pacific Legal Foundation appears here because of its conviction that the courts should not force on state welfare agencies an unwarranted construction of federal regulations that nullifies states' efforts to allocate their limited welfare budgets for the benefit of the greatest number of needy children.

STATEMENT OF THE CASE

Aid to Families with Dependent Children (AFDC) "is a public assistance program funded and administered jointly by the federal and state governments under Subchapter IV, Part A, of the Social Security Act of 1935, as amended, 42 U.S.C. §§ 601-687. States are not required to participate, but those states that do must administer their AFDC programs pursuant to a state plan that complies with federal statutes and regulations and is approved by the Secretary of Health and Human Services (HHS). 42 U.S.C. § 601; *Heckler v. Turner*, 470 U.S. 184, 189 (1985); *King v. Smith*, 392 U.S. 309, 316-17 (1968). The federal government reimburses the state for a portion of the funding for the program. *Heckler*, 470 U.S. at 189.

> AFDC payments are available to children who have been deprived of parental support, are living with certain specified relatives, meet certain age requirements and satisfy state-established financial need standards. 42 U.S.C. §§ 602(a) and 606(a). Caretaker relatives who meet the state financial need requirements may receive AFDC benefits in addition to those provided for eligible dependent children. 42 U.S.C. § 602(a). For purposes of administering the program, AFDC recipients are grouped into "assistance units" that consist of "the group of individuals whose income, resources and needs are considered as a unit for purposes of determining eligibility and the amount of payment." 45 C.F.R. § 206.10(b)(5).

Wilkes v. Gomez, 32 F.3d 1324, 1326 (8th Cir. 1994).

California participates in the AFDC program. Welf. & Inst. Code § 11407. A regulation and policy in the plan

which implements California's program, Eligibility and Assistance Standards Manual of Policies & Procedures § 44-205.31, and its successor, Section 82-824.1, (California Rule) provide that if (1) AFDC assistance is sought for a needy dependent child who is not the child or offspring of the caretaker relative (nonsibling), and (2) there are other dependent children living in the household for whom the caretaker relative receives assistance, then the assistance unit must comprise all the needy persons in the household--siblings, nonsiblings, and the needy caretaker relative alike. Appendix to Petition for Certiorari (App. to Pet. for Cert.) at 51-52. A class action complaint challenged the California Rule, alleging that the rule was invalid as contrary to certain provisions of the federal statutes and regulations which govern the AFDC program, and it sought declaratory and injunctive relief. On cross-motions for summary judgment, the United States District Court for the Eastern District of California granted respondents' motion and invalidated the California Rule. The District Court's grant of summary judgment held that *Beaton v. Thompson*, 913 F.2d 701 (9th Cir. 1990), which overturned a Washington State AFDC regulation similar to the California Rule, controlled the case. The court reasoned that stare decisis bound it to invalidate the California Rule and to enjoin the rule's enforcement.

California filed an appeal from the judgment with the Ninth Circuit Court of Appeals. Petitioners asserted on appeal that *Beaton* was wrongly decided, and they urged the Court of Appeals to overrule *Beaton* and reverse the District Court's decision. Invoking stare decisis again, the Court of Appeals decided that *Beaton* dictated the outcome of the case, and that regardless of whether it agreed with the precedent, as a three-judge panel it lacked the authority to overrule *Beaton*. The Court of Appeals then denied petitioners' Petition for Rehearing and Suggestion for Rehearing En Banc.

This Court granted petitioners' Petition for Writ of Certiorari on September 26, 1994, to resolve the question which this case presents.

SUMMARY OF ARGUMENT

In reliance on *Beaton v. Thompson*, 913 F.2d 701, a case wrongly decided, the courts below overturned the California Rule, which grouped all needy children, siblings and nonsiblings alike, with their caretakers into a single AFDC assistance unit for the determination of AFDC benefits. The basis for their decisions was *Beaton*'s application of federal welfare regulations, which precluded the attribution of income to an AFDC assistance unit and required the uniform treatment of AFDC recipients, to a Washington state rule similar to the California Rule. The decisions below failed to recognize the latitude federal law gives to each state in dispensing its welfare funds, and they completely overlooked the Department of Health and Human Services' longstanding interpretations of those federal welfare regulations which *expressly allowed* states to promulgate and enforce provisions such as the California Rule. Decisions of this Court require lower courts to defer to such interpretations of regulations because the regulations' plain language compel no alternative reading, and because indications of intent at the time of the regulations' promulgation point to a different purpose for their enactment. Finally, the California rule represents the fairer method, over the decisions reached below, to provide each needy child with the largest amount of AFDC benefits per capita from a limited pool of welfare funds.

ARGUMENT

I

THE SOCIAL SECURITY ACT GIVES STATES GREAT LATITUDE TO DISPENSE THEIR AVAILABLE AFDC FUNDS

The Ninth Circuit relied on *Beaton v. Thompson*, 913 F.2d 701,[1] to overturn the California Rule on the grounds that it was inconsistent with federal regulations. The supposed inconsistencies arose because the state regulations were deemed to presume that an AFDC caretaker would share her resources with minor household members for whom she was not legally responsible and because the state regulations were found to deny such caretakers uniform treatment.

To determine the validity of a state regulation "the starting point of the statutory analysis must be a recognition that the federal law gives each State great latitude in dispensing its available funds." *Dandridge v. Williams*, 397 U.S. at 478; *see also Shea v. Vialpando*, 416 U.S. 251,

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[1] *Beaton* in turn relied on *McCoog v. Hegstrom*, 690 F.2d 1280 (9th Cir. 1982), and on *Gurley v. Wohlgemuth*, 421 F. Supp. 1337 (E.D. Pa. 1976), and it strongly influenced *Morrell v. Flaherty*, 109 N.C. App. 628, 428 S.E.2d 492, *stay granted*, 333 N.C. 792, 430 S.E.2d 424, *review allowed*, 334 N.C. 165, 432 S.E.2d 364 (1993). *Bray v. Dowling*, 25 F.3d 135 (2d Cir. 1994). The regulations on which these courts relied were 45 C.F.R. §§ 233.10(a)(1), 233.20(a)(2)(iii), (viii), and 233.90(a)(1).

253 (1974) (AFDC program "administered by the States, which are given broad discretion in determining both the standard of need and the level of benefits"); *King v. Smith*, 392 U.S. at 318-19 ("[t]here is no question that States have considerable latitude in allocating their AFDC resources, since each State is free to set its own standard of need and to determine the level of benefits by the amount of funds it devotes to the program"). Because Congress has given each state such broad discretion "'[s]o long as the State's actions are not in violation of any specific provision of the Constitution or the Social Security Act,' the courts may not void them." *New York State Department of Social Services v. Dublino*, 413 U.S. 405, 423 n.29 (1973) (quoting *Jefferson v. Hackney*, 406 U.S. at 541). Amicus curiae will demonstrate that the California Rule is not inconsistent with the Social Security Act or with its regulations.

II

THE SOCIAL SECURITY ACT AND ITS CORRESPONDING REGULATIONS DO NOT PROHIBIT A STATE FROM ENACTING RULES REQUIRING THE INCLUSION IN A SINGLE AFDC ASSISTANCE UNIT OF NEEDY CARETAKER RELATIVES AND ALL NEEDY CHILDREN LIVING IN ONE HOUSEHOLD

A. The Composition of an Assistance Unit Is Not Comprehensively Defined

Administration of the AFDC program requires states first to group benefit recipients into "assistance units," which consist of "all individuals whose needs, income, and resources are considered in determining eligibility for, and the amount of, a[n assistance] payment." 45 C.F.R. § 205.40(b)(1). However, the Social Security Act and its

corresponding regulations do not comprehensively define the composition of an AFDC assistance unit.

B. The Federal Regulations Mandating Uniform Treatment of AFDC Recipients Do Not Conflict with the California Rule

Federal regulations require equitable, uniform, and reasonable treatment of AFDC recipients. 45 C.F.R. §§ 233.10(a)(1), 233.20(a)(2)(iii). Although these regulations were not invoked against the California Rule before the courts below in this litigation, they have been used to challenge similar state rules before other courts. *See, e.g., Beaton*, 913 F.2d at 704 n.4; *Bray*, 25 F.3d at 136; *Wilkes*, 32 F.3d at 1326. They do not prevent states from promulgating and enforcing rules such as the California Rule.

Section 233.10(a)(1) provides in pertinent part:

> A State plan under ... Title IV-A ... of the Social Security Act must:
>
> (1) Specify the groups of individuals, based on reasonable classifications, that will be included in the program, and all the conditions of eligibility that must be met by the individuals in the groups. The groups selected for inclusion in the plan and the eligibility conditions imposed must not exclude individuals or groups on an arbitrary or unreasonable basis, and must not result in inequitable treatment of individuals or groups in the light of the provisions and purposes of the public assistance titles of the Social Security Act.

45 C.F.R. § 233.10(a)(1), *quoted in Bray v. Dowling*, 25 F.3d at 138-39 n.7. This federal regulation does not

apply to the California Rule. The regulation's terms direct its application to "eligibility conditions," but the California Rule does not affect eligibility for AFDC benefits. Rather, it simply configures persons into assistance units before the determination of eligibility. *See* 57 Fed. Reg. 30,139 (1992).

Federal regulations further require that "[a] State Plan for ... AFDC ... must ... [p]rovide that the standard will be uniformly applied throughout the State." 45 C.F.R. § 233.20(a)(2)(iii), *quoted in Bray*, 25 F.3d at 138-39 n.7. The manner in which the California Rule configures AFDC assistance units does not conflict with these regulations. Rather, the California Rule actually furthers the regulations because it maintains uniformity by identical treatment of similarly sized households which receive AFDC benefits wherein one caretaker relative spends AFDC funds for the benefit of all members of the household.

Challengers of similar state rules have created alternative standards of uniformity of treatment which the rules then arguably fail to meet. *See, e.g., Bray*, 25 F.3d at 146; *Wilkes*, 32 F.3d at 1330. Nonetheless, because the regulations themselves offer no basis to prefer one version of uniformity over another, this Court should defer to states' resolutions of the issue. *See Dandridge*, 397 U.S. at 487. ("Conflicting claims of morality and intelligence are raised by opponents and proponents of almost every measure, certainly including the one before us. But the intractable economic, social, and even philosophical problems presented by public welfare assistance programs are not the business of this Court.")

C. The Federal Regulations Regarding the Imputation of Income from Non-AFDC Sources Do Not Conflict with the California Rule

1. The Agencies Responsible for the Administration of the Social Security Act Have Consistently Permitted States to Group Assistance Units in the Manner Accomplished by the California Rule

The Department of Health and Human Services is currently responsible for the administration of the Social Security Act; its predecessor, the Department of Health, Education and Welfare (HEW), previously discharged this responsibility. Both agencies have consistently allowed states the option to treat a caretaker relative and the minor children in her household, including those for whom she was not legally responsible, as a single AFDC assistance unit. A memorandum from the Administrator of HEW's Social and Rehabilitation Service to a regional HEW official concluded,

> States may ... provide for two AFDC payments in the case of a mother who is the caretaker relative for her own children and her sister's children. In such a situation, the State may establish two budget units or it may include all children in one AFDC payment.

Memorandum dated October 13, 1976, from Robert Fulton, Administrator, Social and Rehabilitation Services to Alwyn L. Carty, Regional Commissioner, Region III, Social and Rehabilitation Service, *quoted in Bray v. Dowling*, 25 F.3d at 142. In response to a District Court's inquiry regarding ongoing litigation, the Secretary of HEW stated:

> The composition of an AFDC assistance unit is not defined in Federal law. So too, the budgeting methods a state may use to determine the level of an AFDC payment to a family is not mandated by Federal requirements. Therefore, states are free to prescribe the composition of an AFDC assistance unit and the budgeting method they will use for such unit.

Allen v. Hettleman, 494 F. Supp. 854, 861 (D. Md. 1980) (quoting letter from Secretary of HEW).

In Action Transmittal No. SSA-AT-86-1 (Jan. 13, 1986), App. to Pet. for Cert. at 44, HHS stated that "it is up to the State to establish policy on the number of assistance units in the household, e.g., when an individual not related to a member of an assistance unit as a parent, brother or sister lives in the household and files for assistance." App. to Pet. for Cert. at 50. HHS "re-state[d] the policy governing the authority of State agencies to consolidate assistance units in certain situations and [clarified] that such a consolidation does not conflict with the Federal regulations that prohibit assuming the availability of income from certain persons without actually determining that it has been contributed." Action Transmittal No. ACF-AT-94-6 (Mar. 16, 1994), App. to Pet. for Cert. at 34. This latter transmittal then expressed its position that, aside from complying with two federal requirements inapplicable to this litigation, "States are authorized to set the State-wide policy, to be applied to all cases, whether and under what conditions two or more assistance units in the same household are to be consolidated or retained as separate units. *See* Action Transmittal SSA-AT-86-1; 57 F.R. 30132, 30136-30137 (1992)." App. to Pet. for Cert. at 35-36.

An agency's consistent interpretation of its own regulations is entitled to substantial deference. *Martin v. Occupational Safety and Health Review Commission*, 499 U.S. 144, 150-51 (1991). A recent case involving the Secretary of HHS' interpretation of Medicare regulations stated that courts

> must defer to the Secretary's interpretation unless an "alternative reading is compelled by the regulation's plain language or by other indications of the Secretary's intent at the time of the regulation's promulgation." *Gardebring v. Jenkins*, 485 U.S. 415, 430 (1988). This broad deference is all the more warranted when, as here, the regulation concerns "a complex and highly technical regulatory program," in which the identification and classification of relevant "criteria necessarily require significant expertise and entail the exercise of judgment grounded in policy concerns." *Pauley v. BethEnergy Mines, Inc.*, 501 U.S. 680, 697 (1991).

Thomas Jefferson University v. Shalala, 129 L. Ed. 2d at 415. An examination of the statutes and regulations governing the AFDC program readily confirms the Eighth Circuit's assessment that it "is certainly a complex and highly technical regulatory program." *Wilkes v. Gomez*, 32 F.3d at 1329. Further, the issue in this litigation, "which involves the allocation of limited AFDC resources, necessarily entails the exercise of judgment grounded in policy concerns." *Id.* Thus, deference to HHS' interpretations of the AFDC regulations is warranted. Finally, the citations in the Action Transmittals to the regulations at issue and to their history in the *Federal Register* indicate HHS' reliance on their express language and on its intent at the time it promulgated them.

2. Neither the Plain Language of the Federal Regulations Nor Contrary Indications of Their Intent Compel an Alternative Reading of Them

Several federal regulations limit the power of states to decrease the benefits of an AFDC recipient by imputing to the recipient support from persons who have no obligation to furnish it. 45 C.F.R. §§ 233.20(a)(2)(viii), 233.20(a)(3)(ii)(D), and 233.90(a)(1). Section 233.20(a)(2)(viii) provides in pertinent part that a State Plan for AFDC must:

> Provide that the money amount of any need item included in the standard will not be prorated or otherwise reduced solely because of the presence in the household of a non-legally responsible individual; and the agency will not assume any contribution from such individual for the support of the assistance unit except as provided in [provisions addressing stepparents and sponsored aliens not relevant to this litigation, and a provision addressing permissible proration].

45 C.F.R. § 233.20(a)(2)(viii), *reprinted in* App. to Pet. for Cert. at 30. Section 233.20(a)(3)(ii)(D) provides in pertinent part:

> To the extent not inconsistent with any other provision of this chapter, income and resources are considered available both when actually available and when the applicant or recipient has a legal interest in a liquidated sum and has the legal ability to make such sum available for support and maintenance.

45 C.F.R. § 233.20(a)(3)(ii)(D), *reprinted in* App. to Pet. for Cert. at 31. Section 233.90(a)(1) provides:

> A State plan under title IV-A of the Social Security Act shall provide that:
>
> (1) The determination whether a child has been deprived of parental support or care by reason of the death, continued absence from the home, or physical or mental incapacity of a parent, or (if the State plan includes such cases) the unemployment of his or her parent who is the principal earner will be made only in relation to the child's natural or adoptive parent, or in relation to the child's stepparent who is married, under State law, to the child's natural or adoptive parent and is legally obligated to support the child under State law of general applicability which requires stepparents to support stepchildren to the same extent that natural or adoptive parents are required to support their children. Under this requirement, the inclusion in the family, or the presence in the home, of a "substitute parent" or "man-in-the-house" or any individual other than the one described in this paragraph is not an acceptable basis for a finding of ineligibility or for assuming the availability of income by the State ....

45 C.F.R. § 233.90(a)(1), *reprinted in* App. to Pet. for Cert. at 32.

a. Sections 233.20(a)(2)(viii) and 233.90(a) Were Enacted to Address a Different Issue

HEW initially promulgated §§ 233.20(a)(2)(viii) and 233.90(a) to implement *King v. Smith*, 392 U.S. 309, and *Van Lare v. Hurley*, 421 U.S. 338 (1975). *See Van Lare*, 421 U.S. at 345 ("[HEW] codified the holding of *King v. Smith* in 45 CFR § 233.90(a)."); 42 Fed. Reg. 6583, 6584 (1977) (stating that Sections 233.20(a)(2)(viii) and 233.90(a) were promulgated to implement *Van Lare*).

In *King*, Alabama argued that its "substitute father" regulation defined who is a nonabsent parent according to Section 406(a) of the Social Security Act. 392 U.S. at 317-18 (citing 42 U.S.C. § 606(a)). This Court held that the regulation, which denied AFDC benefits to the children of mother who cohabited with a man in or outside her home, was invalid because its definition of "parent" was inconsistent with Section 406(a). 392 U.S. at 329-30. "Congress must have meant by the term 'parent' an individual who owed to the child a state-imposed legal duty of support." 392 U.S. at 329. Although states may take account of "regular and actual contributions" to a dependent child from a nonlegally responsible individual in determining need, states may not assume that individuals with no legal obligation will make resources available to the child. *Id.* at 319, 329. *King*'s holding makes it apparent that Section 233.90(a)(1) remedied a specific loophole in the Social Security Act by clarifying what Congress meant by "parent."

This Court extended and reinforced this rationale in *Lewis v. Martin*, 397 U.S. 552 (1970). After noting that HEW promulgated the regulation shortly after the decision in *King*, this Court concluded that "the regulations explicitly negate the idea that in determining a child's needs, a

stepfather (i.e., a man married to a child's mother but who has not adopted the child and is not legally obligated to support the child under state law) ... may be presumed to be providing support." 397 U.S. at 556-57 (footnote omitted). *Van Lare* addressed New York State "lodger" regulations which reduced pro rata the shelter allowance provided to an AFDC unit that shared a household with nonpaying lodgers. 421 U.S. at 339-40. This Court found the regulations invalid under the Social Security Act and the HEW regulation "insofar as they are based on the assumption that the nonpaying lodger is contributing to the welfare household, without inquiry into whether he in fact does so." 421 U.S. at 346.

The common thread of the federal regulations and this Court's decisions which gave rise to and interpreted them is absent from the California Rule. The state rules that this Court overturned as conflicting with the Social Security Act and its corresponding regulations left AFDC beneficiaries without recourse if the substitute father or lodger failed to contribute to the AFDC unit. This occurred because no duty existed under state law compelling them to apply their income for the support of AFDC beneficiaries. The situation with the Action Transmittals and the California Rule is different. First, the overturned state rules addressed outsiders to an assistance unit, while the HHS interpretations and the California Rule address the members of an assistance unit. Second, the overturned state rules imputed the resources of an outsider to an assistance unit, while the HHS interpretations and the California Rule evaluate the resources of the members of an assistance unit.

Finally, the outsiders to the assistance units above had no legal obligation to provide their resources to the assistance unit. On the other hand, the caretaker of an assistance unit must spend her grant on behalf of all the needy children in

it. The Social Security Act allows a state to provide for "the imposition of criminal or civil penalties authorized under State law if it is determined by a court of competent jurisdiction that [the relative receiving AFDC payments] is not using or has not used for the benefit of the child any such payments made for that purpose." 42 U.S.C. § 605. California has made such provision: "Any person other than a needy child, who willfully and knowingly receives or uses any part of an aid grant paid pursuant to this chapter for a purpose other than support of the needy children and the caretaker involved, is guilty of a misdemeanor." Welf. & Inst. Code § 11480. This obligation to spend AFDC funds in the children's best interests "makes it reliably certain that [t]his income is actually available for the support of the children in the household." *Lewis*, 397 U.S. at 558. Therefore, because the factual basis for the federal regulations is distinct from the facts of this litigation, HHS fairly interpreted the regulations as not conflicting with the California Rule and other similar state rules.

b. Section 233.20(a)(3)(ii)(D) Addresses when Resources Are Available to an Assistance Unit, Not How Assistance Units Must Be Grouped

The crux of Section 233.20(a)(3)(ii)(D) is that when an assistance unit is evaluated for the need of its members and the amount of benefits it requires, the income and resources of its members are deemed available to the assistance unit when they are actually available and when applicants or recipients can legally make them available. This provision does not address who should be included in an assistance unit but, rather, the true financial wherewithal for AFDC purposes of an already-configured assistance unit--it precludes the consideration of contingent or speculative wealth in the evaluation of need for the computation of

benefits. The plain language of this provision does not preclude HHS' interpretation of it. Therefore, this Court should defer to the HHS' interpretation and permit states to enact and enforce provisions such as the California Rule.

In short, these regulations deal only with eligibility, need, amount of assistance, and deprivation of parental support. They do not limit states' ability to consolidate assistance units.

III

THE CALIFORNIA RULE IS THE FAIREST APPROACH FOR THE ALLOCATION OF SCARCE WELFARE RESOURCES FOR THE GREATEST NUMBER OF DEPENDENT CHILDREN

As part of the Deficit Reduction Act of 1984 (DefRA), Pub. L. No. 98-369, 98 Stat. 494 (1984), Congress amended the Social Security Act to require that, as a general rule, parents and siblings, as well as grandparents, in the case of a minor parent, who live in the same household with an AFDC beneficiary be included in a single AFDC assistance unit. *See* DefRA § 2640(a), 98 Stat. 1145 (codified as amended at 42 U.S.C. § 602(a)(38) and (39)). DefRA's purpose for enacting these amendments was to prevent families that apply for assistance from "exclud[ing] from the filing unit certain family members who have income which might reduce the family benefit." S. Print No. 169, Vol. I, 98th Cong., 2d Sess. 980 (1984), *quoted in Bowen v. Gilliard*, 483 U.S. 587, 592-93 (1987); *see also* H.R. Conf. Rep. No. 98-861, 1407 (1984), *reprinted in* 1984 U.S.C.C.A.N. 1445, 2095.

Before the enactment of DefRA, AFDC applicants could control the composition of their assistance units to

maximize AFDC benefits. *Bowen v. Gilliard*, 483 U.S. at 590. DefRA limited this control by requiring that certain persons be included in the assistance unit. Although DefRA stopped short of addressing the facts in this litigation, its animating spirit is also present in the California Rule and other similar state rules. The deference that is warranted to these rules enables states to continue what DefRA started and configure assistance units to make the greatest amount of limited welfare resources available to the largest number of needy children.

This Court has recognized that the pool of welfare money is fixed and that many persons have need for the money. *See Jefferson v. Hackney*, 406 U.S. at 537. Congress' deep concern for needy children was part of the reason it enacted the Social Security Act, and a House Committee Report at that time declared, "'the core of any social plan must be the child.'" *King*, 392 U.S. at 327-28 (quoting H.R. Rep. No. 615, 74th Cong., 1st Sess. 10 (1935)). The California Rule represents one state's attempt to use its limited welfare budget for the greatest good of the most children. By grouping sibling and nonsibling children into one assistance unit, the state ensures that each child gets the maximum average benefit without consideration for fortuities arising from birth.

Without the California Rule, all caretakers, needy and nonneedy, would receive a larger AFDC benefit by taking in nonsiblings. By attacking the California Rule, respondents seek to maximize their welfare benefits and claim a bounty for taking in these needy nonsiblings. They ignore the economies of scale available in a single household, *see Dandridge*, 397 U.S. at 479-80, even if it does include nonsibling children, and they overlook the fact that the additional money they seek would come at the expense of other needy children who happen to live only with siblings.

California's treatment of the situation, which groups all needy persons into one assistance unit and allocates a uniform benefit to it, is the fairer approach. It helps needy children by providing, on the average, the most AFDC benefits to each.

CONCLUSION

The Court of Appeals mechanically applied one of its previous decisions to reach its result. Its earlier decision was incorrect because the Court of Appeals extended inadequate deference to state rules controlling the expenditure of limited welfare funds, and because it extended no deference to the Department of Health and Human Services' interpretation of the federal regulations which the court applied to the state rules. The Department of Health and Human Services' interpretation expressly permitted states to enact and enforce such rules. Such state rules allow limited welfare funds to help needy children equally. Pacific Legal Foundation, as amicus curiae, therefore urges that the decision of the Court of Appeals be reversed.

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Respectfully submitted,

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